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12 SUPERIOR COURT OF STATE OF ARIZONA
13 COUNTY OF YAVAPAI

14 STATE OF ARIZONA,

15 Plaintiff,

16 vs.

17 JAMES ARTHUR RAY,

18 Defendant.
19
20

CASE NO. V1300CR201080049

Hon. Warren Darrow

DIVISION PTB

**DEFENDANT JAMES ARTHUR RAY'S
SUPPLEMENT TO MOTION FOR
RECONSIDERATION OF ORAL
RULING TO ADMIT EVIDENCE OF
PRIOR SWEAT LODGE CEREMONIES**

21 In accordance with this Court's request, Defendant James Arthur Ray, by and through
22 undersigned counsel, hereby supplements his motion for reconsideration of the Court's April 6
23 ruling to admit evidence from prior sweat lodge ceremonies. This motion is supported by the
24 following Memorandum of Points and Authorities.
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DEFT'S SUPPLEMENT TO MOTION FOR RECONSIDERATION RE: PRIOR SWEAT LODGE EVIDENCE

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court stated on April 6 that the prosecution could make limited inquiry into prior sweat lodge ceremonies for the sole purpose of proving physical causation. In issuing that limited ruling, the Court relied on three proffers made by the State. Recent developments, including material uncovered as a result of the State's violation of its constitutional duty under *Brady v. Maryland*, show that all three of the State's proffers are unfounded:

1. State's Proffer: Medical experts will confirm that it is medically sound to extrapolate or deduce a cause of death in 2009 based on alleged symptoms experienced by other people at ceremonies in prior years. *See, e.g.*, State's Reply in Support of Motion for Reconsideration, 2/24/11, at 7–8 (“the fact that past participants also experienced classic signs of heat stroke in the same sweat lodge structure as used in 2009 . . . rebuts Defendant's attempt to convince the jury that the victims died in 2009 from something other than their exposure to extreme heat conditions”); Trial Transcript, 3/9/11, at 8:25–9:3 (Exhibit A) (THE COURT: “[T]here would have to be expert testimony that would indicate that evidence of effects of prior sweat lodge events is relevant to the issue of causation.”).
Fact: The State's own medical expert, Dr. A.L. Mosley, believes that it would be “dangerous” to extrapolate anything about the cause of death in 2009 based on evidence of what may have happened at prior sweat lodge ceremonies and would *not* consider such factors in his determination of cause of death in 2009. *See* Transcript of Interview of Dr. Mosley, 4/18/11, at 36–37 (Exhibit B). *See infra* II.A.1.
2. State's Proffer: The sweat lodge structure and materials were the same in October 2009 as in prior sweat lodge ceremonies. *See, e.g.*, Trial Transcript, 3/2/11, at 10:17–11:4 (Exhibit C) (“MS. POLK: So regardless of the fact that from 2009 -- 2008 through 2009, the same structure with the same tarps and the same sleeping bags that was used from 2008 forward by Mr. Ray on two occasions and by many,

1 many other contractors -- and what that body of evidence showed is that when that
2 *same sweat lodge structure was used in that same place, over that same soil, with*
3 *the same tarps, and the same sleeping bags, with rocks from the site, the people*
4 *did not get sick when it was someone other than Mr. Ray. When it was Mr. Ray*
5 *conducting his ceremony in 2008 and 2009, people got sick.” (emphasis added)).*
6 *See also* Trial Transcript, 4/1/11, 103:23–25 (Exhibit D) (THE COURT: “Ms. Polk
7 is making the avowal that there will be somebody saying they’re the identical
8 materials.”).

9 **Fact:** The sweat lodge structure and materials were *not* the same in October 2009
10 and prior ceremonies. In addition to Ted Mercer’s testimony that the wood
11 burned, the rocks, and at least some of the coverings were different, Richard
12 Haddow’s opinion makes clear that *numerous* other factors, such as air
13 temperature, barometric pressure, size and mass of the rocks, and many others,
14 determine the physical environment experienced by participants. *See infra* II.A.2.

- 15 3. **State’s Proffer:** In any event, the physical structures did not matter because it was
16 only the actions of Mr. Ray that caused people to get sick. *See, e.g.,* Trial
17 Transcript, 4/6/11, at 17:8–12 (Exhibit E) (“It doesn’t matter what the kiva is made
18 of. It doesn’t matter what the coverings were made of. What matters -- the common
19 denominator is if it’s the defendant running the sweat lodge, then people get
20 sick.”).

21 **Fact:** The physical structure of the sweat lodge *does* matter to the health of people
22 inside of it. According to Mr. Haddow, hyperthermia and hypercapnia (carbon
23 dioxide toxicity) are both substantially affected by the structure and design of the
24 sweat lodge, including the position of the rock pit, placement of the door,
25 placement of rocks on the tarps around the circumference of the sweat lodge, and
26 height of the ceiling. *See infra* II.A.3.

27 These three revelations eliminate the foundation for the Court’s narrow ruling of April 6.

28 It is now clear there is *no* basis for connecting prior sweat lodge ceremonies to physical causation.

1 Because of the State's representations to this Court, days of testimony regarding prior sweat lodge
2 ceremonies have been admitted with *no* permissible purpose. This irrelevant testimony prejudices
3 Mr. Ray by suggesting propensity inferences explicitly forbidden by Rule 404(a) and by the
4 Court's 404(b) ruling of February 3, 2011, and thereby imperils Mr. Ray's right to a fair trial.
5 The Court should preclude any further testimony regarding prior sweat lodge ceremonies, should
6 strike the testimony that has been elicited regarding prior sweat lodge ceremonies, and should
7 give a cautionary instruction to the jury. Furthermore, having ruled out causation as a permissible
8 purpose for the prior sweat lodge evidence, the Court should close this chapter and rule with
9 finality that this body of evidence is inadmissible for any purpose.

10 II. ARGUMENT

11 A. There is no remaining basis for the State's position that prior sweat lodge 12 evidence is relevant to physical causation.

13 1. The State's representation that medical experts would consider prior 14 alleged incidents relevant to physical causation is contradicted by the 15 State's own medical expert.

16 On March 9, the Court indicated that the prior "medical effects" related to the sweat lodge
17 ceremonies could be relevant to causation *only* upon a showing that "expert testimony indicating
18 that evidence of medical effects of prior events is relevant evidence." Trial Transcript, 3/9/11, at
19 6:6–11 (Exhibit A); *see id.* at 8:25–9:3 ("there would have to be *expert testimony that would*
20 *indicate that evidence of effects of prior sweat lodge events is relevant to the issue of*
21 *causation.*"). Without such a link, the Court explained, "the risk there would be that a lot of this
22 evidence would come in and it would never be tied to causation." *Id.* at 7:7–9.

23 Later, on March 31, the State attempted to introduce information regarding prior sweat
24 lodge ceremonies through the expert testimony of Dr. Robert Lyon. The Court denied the
25 attempt. The Court asked the question to which the State had no answer—"How would a prior
26 incident from four years ago -- how would it relate to what an opinion would be as to what caused
27 the situation here?" Trial Transcript, 3/31/11, 209:20–22 (Exhibit F). The Court also agreed with
28

1 the Defense that the State was "treading on dangerous grounds." *See id.* at 215:10–12 ("THE
2 COURT: We are. There is no doubt about that. That could take us right into the 404(b) area.").

3 The State's proffer hinges on a specific premise: that a medical expert believes that an
4 alleged past symptom consistent with (but not specific to) a heat illness is relevant to the
5 determination of cause of death in 2009. On April 18, the State's medical expert, Dr. A.L.
6 Mosley, emphatically rejected this exact premise:

7 DO: Assuming that Daniel [P.] is an individual in 2005 who went to the hospital for
8 heat exhaustion and syncope, not heat stroke, but, you know, that's -- that's what he
9 was treated for, and assuming that --

10 MOSLEY: Okay.

11 DO: -- as a medical examiner determining Liz Neuman's cause of death in 2009,
12 would something that happened to a totally different individual in 2005, some four
13 years earlier, have anything to do with what physically caused Ms. Neuman's demise?

14 MOSLEY: No.

15 DO: Okay. So that particular episode, if true, would have nothing to do with your
16 determination of cause of death from Ms. Neuman; correct?

17 MOSLEY: Well, yeah. *It could be dangerous to try to extrapolate something like*
18 *that into this case.* It's -- I mean, there's so many -- Is it at the same place with the
19 same materials? Is it -- I mean, *I think it would be dangerous -- a dangerous thing to*
20 *do and I'd avoid it. I wouldn't do it.* I mean, try to extrap- -- are you saying, would I
21 try to extrapolate data from something that happened in 2005 to the current case in
22 front of me? Is that the question?

23 DO: Yes.

24 MOSLEY: *No, I wouldn't.*

25 Transcript of Interview of Dr. A.L. Mosley, 4/18/11, at 36–37 (Exhibit B). Simply put,
26 there is no legitimate medical basis for the argument that certain signs or symptoms in prior years
27 make more or less likely any particular cause of death of different people at a different ceremony
28 with different environmental conditions years later. This defect, now confirmed by Dr. Mosley,

1 is an independent, dispositive basis to reject the State's physical causation theory, exclude further
2 evidence from prior sweat lodge ceremonies, and strike the evidence that has been admitted.

3 **2. The State's representation that sweat lodge structures were the same is**
4 **false.**

5 The State has also represented to this Court that the sweat lodge structure and materials
6 were the same on October 8, 2009 as in prior sweat lodge ceremonies. *See, e.g.,* Trial Transcript,
7 3/2/11, at 10:17–11:4 (Exhibit C) (“MS. POLK: So regardless of the fact that from 2009 -- 2008
8 through 2009, the same structure with the same tarps and the same sleeping bags that was used
9 from 2008 forward by Mr. Ray on two occasions and by many, many other contractors -- and
10 what that body of evidence showed is that when that *same sweat lodge structure was used in that*
11 *same place, over that same soil, with the same tarps, and the same sleeping bags, with rocks from*
12 *the site*, the people did not get sick when it was someone other than Mr. Ray. When it was Mr.
13 Ray conducting his ceremony in 2008 and 2009, people got sick.”). *See also* Trial Transcript,
14 4/1/11, 103:23–25 (Exhibit D) (THE COURT: “Ms. Polk is making the avowal that there will be
15 somebody saying they're the identical materials.”). Regarding that avowal, the Court emphasized
16 that the materials would have to be *absolutely identical* for the State's theory of physical
17 causation to be tenable:

18 THE COURT: . . . “[W]hat I had said is that if, in fact, this was the same sweat lodge
19 structure that was used in October, *completely the same*, then there would be
20 relevance to this person being in that sweat lodge. I'm concerned about whether she
21 really [knows] that and concerned about is there really another witness who would be
22 saying that the materials are *just absolutely identical, that there hadn't been any*
23 *changing in the covering or anything like that?* And I didn't want to go any further
24 without addressing that.”

25 MS. POLK: Your Honor, it's the State's belief there will be two more witnesses that
26 or perhaps three. The Hamiltons will testify that it is the same skeleton and the same
27 materials. And then I believe Mr. Mercer will as well.

1 THE COURT: *For the testimony to be admissible on the basis I've indicated at*
2 *sidebar, that's critical.* That that's the case. So I wanted to stop and make sure that
3 that is the case before you got into those questions about her experience in may or
4 whenever it was. I wanted to address that." Trial Transcript, 4/1/11, at 109:13–110:10
5 (Exhibit D).¹

6 Beginning with the testimony of Ted Mercer, it became apparent that the sweat lodge
7 materials were, in fact, not the same across different ceremonies. Mr. Mercer testified that the
8 rocks used and wood burned in 2009 were not the same as those used in prior ceremonies. He
9 further testified that he would be guessing as to whether any of the tarps were the same and that
10 least some of the blankets were not the same, and that he did not know whether they were layered
11 in the same way. *See, e.g.*, Trial Transcript, 4/6/11, 122:14–126:4 (voir dire by Mr. Li) (Exhibit
12 E); Draft Trial Transcript, 4/7/11, at 73–75 (cross-examination by Mr. Li) (Exhibit G).

13 Richard Haddow's opinions and analysis forcefully confirm that the State's representation
14 was unfounded. First, Haddow concluded that the design and construction of the sweat lodge
15 structure mattered and were a contributing cause of death, contrary to the State's assertions that
16 these factors did not matter. *See* Haddow Preliminary Report, emailed to Ross Diskin on 4/29/10
17 (Exhibit H). *See also* Transcript of Interview of Richard Haddow, 4/15/11, Part 3, at 21:8–15
18 (Exhibit I).² Second, the long list of variables that Haddow identifies as affecting environmental
19 conditions inside the sweat lodge could never be the same between years. These variables, as
20 reflected in Haddow's notes, include:

- 21 • Number of people per session (meaning round)

22 ¹ To the extent the Court's comments were made only in the context of the testimony of Fawn Foster, they
23 logically apply equally to *any* attempt to compare the 2009 sweat lodge to prior sweat lodge ceremonies as
a means of "ruling out" causes of death other than heat or proving that heat stroke caused the deaths.

24 ² DO: You felt that, you know, let's put the weight aside—another factor that lead to this tragedy was the
25 construction of the sweat lodge, correct?

26 HADDOW: Yes.

27 DO: And you made that known not only in your April 29 email to Detective Diskin that was then
forwarded to the prosecution but you also made that known to the prosecution when you were explaining
all these various factors of the heat barrier, the airtight structure, things like that, correct?

28 HADDOW: Yes.

- Amount of water used on rocks
- Heat from rocks/size of rocks
- Material/construction of lodge
- Time in lodge per session and continuous vs. resting outside period
- Session length
- Break length
- Other pollutants
- Sage/oil essences
- Offgassing of formaldehyde (from the plastic tarps)
- Pooling height of CO2
- Position of people, lying/sitting
- Human breath/CO2 exhalation
- Air exchange rate/potential
- Temperature
- Relative humidity
- CO
- O2
- Barometric pressure
- Ambient temperature
- Location/influence of rock heating fire

See Richard Haddow notes, disclosed 4/15/11, at Defense 0000296 (Exhibit J).³ Haddow also asked in his notes, “was the sweat lodge layered differently this year compared to other years?” *See Id.* at 0000295.

Thus, the expert opinion the State suppressed, as well as the notes and analysis underlying that opinion, eliminate the basis for the Court’s finding that a comparison of effects between the October 2009 sweat lodge ceremony and prior sweat lodge ceremonies could somehow illuminate

³ There are a few other variables listed in the notes that are not legible.

1 whether a cause other than heat contributed to the 2009 deaths. The physical environment of the
2 sweat lodge is determined by myriad factors that necessarily differ between ceremonies, even if
3 the “kiva” is the same. And significantly, the 2005 sweat lodge ceremony did not even use the
4 same “kiva.” Rather, after the 2005 ceremony, the “kiva” was rebuilt *three* times -- in 2006, 2007
5 and 2008. Any possible probative value that could be derived from this apples-to-oranges
6 comparison is far outweighed by the risk of confusion, error, and improper propensity inferences.

7 **3. The State’s representation that the sweat lodge structure does not**
8 **matter is refuted by Mr. Haddow’s opinions.**

9 The State also represented to the Court that the sweat lodge structure did not actually
10 matter, because Mr. Ray was the “common denominator” between the sweat lodge ceremonies,
11 and Mr. Ray’s conduct was the cause of illness. *See, e.g.*, Trial Transcript, 4/6/11, at 17:8–12
12 (Exhibit E) (MS. POLK: “It doesn’t matter what the kiva is made of. It doesn’t matter what the
13 coverings were made of. What matters -- the common denominator is if it’s the defendant running
14 the sweat lodge, then people get sick.”). Apart from being an impermissible propensity theory,⁴
15 this articulation, too, is refuted by the facts that have recently come to light.

16 In particular, Mr. Haddow’s analysis and opinions emphasize that the structure of the
17 sweat lodge *does* matter to any evaluation of how people became ill in 2009, whether from
18 hyperthermia or other contributing causes. For example, in his April 29 report, Haddow explains
19 that “The NW section of the lodge experienced a radiant heat barrier that would greatly contribute
20 to the section’s air stagnation and build up of carbon dioxide,” and that “this heat barrier would
21 severely limit” air exchange and ventilation.” *See* Haddow Preliminary Report, emailed to Ross
22 Diskin on 4/29/10 (Exhibit H). Similarly, in his notes, Haddow wrote that:

- 23 • “the sweat lodge had no ventilation system. The sweat lodge door/access opening
24 did not provide adequate air exchange to the majority of the interior space.”

25 ⁴ As noted in the Motion for Reconsideration filed April 7, if the State were truly concerned with physical
26 causation, the common denominator would be heat, not Mr. Ray, and the nature and number of the
27 coverings, the wood, the water, and the rocks would all matter—because they affect the intensity of the
28 heat, or lack thereof. Instead, the State argues that *Mr. Ray* is the causal agent. This is explicitly a theory
of Mr. Ray’s propensity for recklessness rather than an argument regarding heat as opposed to toxins.
Rule 404(a) thus bars the State’s theory.

- 1 • “the sweat lodge construction . . . was sealed by excess material on the ground
2 held in place by rocks. This construction design greatly contributed to the
3 hazardous ambient environmental conditions.”

4 Haddow Notes, at 0000291-92 (Exhibit J).

5 In the parties’ April 15 interview, Haddow also opined that the sweat lodge construction
6 essentially did not provide sufficient air volume for a group of 70 people to stay inside for a period
7 of two hours. And, once again, Haddow stated the construction of the sweat lodge contributed to
8 the deaths. *See* Transcript of Interview of Richard Haddow, 4/15/11, Part 3, at 20:9–16 (Exhibit I).

9 **B. The Court must take action to remedy the error and protect Mr. Ray’s right**
10 **to a fair trial.**

11 The evidence that has come to light shows that the testimony regarding prior sweat lodge
12 ceremonies is inadmissible. The Court permitted this testimony based on explicit representations
13 by the State that have been revealed to be false. The result of the State’s representations is that
14 *days* of inadmissible and prejudicial testimony have been introduced—testimony that goes only to
15 propensity inferences forbidden by the Rules of Evidence and this Court’s February 3 ruling.

16 Curative steps are required to remedy this problem, give effect to the Court’s ruling of
17 February 3, 2011, and protect Mr. Ray’s fair trial right. “[W]hen evidence is admitted subject to
18 proof of connection, and the proponent of the evidence fails to adduce such proof, ‘the trial court
19 must instruct the jury to disregard the evidence.’” *United States v. Ruffin*, 40 F.3d 1296, 1298
20 (D.C. Cir. 1994) (quoting *Huddleston v. United States*, 485 U.S. 681, 690 (1988)). As the Illinois
21 Supreme Court succinctly stated: “Evidence admitted upon an assurance that it will later be
22 connected up should be excluded upon failure to establish the connection.” *Leonardi v. Loyola*
23 *University of Chicago*, 168 Ill.2d 83, 96 (Ill.1995). Here, the Court should strike the evidence
24 regarding prior sweat lodge ceremonies that has been admitted, exclude any future testimony on
25 the subject, and instruct the jury that it must not consider the evidence for *any* purpose.

1 DATED: April 20, 2011

MUNGER, TOLLES & OLSON LLP

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By: 

Attorneys for Defendant James Arthur Ray

8
9 Copy of the foregoing delivered this 20th day
10 of April, 2011, to:

11 Sheila Polk

12 Yavapai County Attorney

13 Prescott, Arizona 86301

14 by 

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI

3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs.) Case No. V1300CR201080049
7 JAMES ARTHUR RAY,)
8 Defendant.)
9 _____

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15 BEFORE THE HONORABLE WARREN R. DARROW
16 TRIAL DAY TWELVE
17 MARCH 9, 2011
18 Camp Verde, Arizona

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23
24 REPORTED BY
25 MINA G. HUNT
 AZ CR NO. 50619
 CA CSR NO. 8335

1 effects, had there been inquiry, what would have
2 been learned? Just as an example.

3 But the charge was not just negligent
4 homicide. And as a result of that, the 403 factor
5 comes in because of the charge of manslaughter.
6 And I determined that it's not appropriate to allow
7 evidence under 404(b) that would apply only to the
8 lesser included negligent homicide charge but not
9 to the manslaughter charge.

10 The risk of prejudice would just be too
11 great to have that in place. And I didn't see any
12 further briefing on that.

13 The ruling that I issued did not cover
14 admissibility for non-404(b) purposes. If the
15 evidence -- if the information is disclosed
16 properly, then it can be offered in good faith for
17 a non-404(b) purpose. And my ruling would not have
18 changed that in any way. That would just be the
19 typical posture of any case where there are
20 objections or motions in limine that come up during
21 trial.

22 One potential non-404(b) purpose is
23 related to causation. I made that determination.
24 I can see that there may be relevance to that
25 question.

1 However, I conclude that until there is
2 expert testimony indicating that evidence of
3 medical effects of prior events is relevant
4 evidence, then the evidence should not be offered
5 for that purpose.

6 I talked about conditional admission
7 under Rule 104, specifically 104(b). But the risk
8 there would be that a lot of this evidence would
9 come in and it would never be tied to causation.
10 The old cart-before-the-horse analogy.

11 So that's what I've -- that's my
12 determination, and that's what people need to know
13 for today.

14 Another -- I want to talk about the
15 testimony of Jennifer Haley, just as an example.
16 She testified about a prior sweat lodge event that
17 she participated in, and that could have
18 independent basis for admissibility. Not just the
19 causation question. But it does raise the issue of
20 what can happen with imprecise testimony about the
21 effects of a prior sweat lodge.

22 She testified, in her opinion, needed to
23 go to the hospital. Just potentially very
24 prejudicial testimony.

25 However, the testimony regarding the

1 prior sweat lodge had other relevance besides the
2 effect on the one participant she talked about.

3 There was a bench conference regarding
4 Ms. Haley, and there was an indication that the
5 state wanted to question about the knowledge of
6 Mr. Ray concerning that effect on that participant.

7 There was actually testimony to that
8 effect anyway, and it was not objected to. And I
9 think it had a basis for admissibility. It came up
10 in another context in Miss Haley's testimony.

11 However, at bench it was indicated that
12 the relevance of knowledge of Mr. Ray would be that
13 he would know that it was heat. And that's not
14 pertinent to the issue of causation.

15 So right now I've acknowledged that there
16 are some non-404(b) grounds for admissibility, and
17 these, essentially, have been urged by the state.
18 One I discussed at the pretrial conference on
19 March 1 at the start. And that is as rebuttal if
20 there is an inaccurate portrayal of state of
21 knowledge by Mr. Ray. That was one.

22 The other that has come up is causation.
23 But I've determined that it's not going to be
24 appropriate to admit evidence conditionally under
25 104(b). That there would have to be expert

1 testimony that would indicate that evidence of
2 effects of prior sweat lodge events is relevant to
3 the issue of causation.

4 And then there has just been a discussion
5 throughout about what is relevant to the state of
6 mind of a participant and what was done by a
7 participant or by one of the alleged victims.

8 I also wanted to mention with regard to
9 questioning witnesses -- and I'm noting the length
10 of the testimony of witnesses. And the Court will
11 certainly assist, if requested, by either counsel
12 if questions are not being answered.

13 I don't like to interject myself into a
14 proceeding. I prefer not to do that. But I'm
15 going to just to fulfill my responsibility to make
16 sure the trial proceeds in a reasonable manner.

17 So the parties can ask me to assist if a
18 witness is not answering a question.

19 With regard to the disclosure question
20 that came up yesterday, which I think is a serious
21 matter, do you have additional authority on that,
22 Ms. Do?

23 MS. DO: I do, Your Honor. Thank you very
24 much.

25 I would like to cite the Court to

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8

SUPERIOR COURT OF STATE OF ARIZONA

9

COUNTY OF YAVAPAI

10

11 STATE OF ARIZONA,

) CASE NO. V1300CR201080049

12 Plaintiff,

) TRANSCRIPT OF INTERVIEW

13 vs.

) Witness: Dr. Arch Mosley

14 JAMES ARTHUR RAY,

) By: Truc T. Do, Esq.

15 Defendant.

) Present: Bill Hughes, Esq.

16

) Date: April 18, 2011

17

) Length: 53.12

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1 then take a look at the 2005 medical record of an
2 individual named Daniel Pfankuch?

3 MOSLEY: No. I'm sorry. What's his name again?
4 Daniel?

5 DO: Pfankuch, P-f-a-n-k-u-c-h.

6 MOSLEY: Okay.

7 DO: P, as in "Paul," f, as in "Frank," a, n, as in
8 "Nancy," k-u-c-h.

9 Okay. So you haven't looked at that; right?

10 MOSLEY: That's correct.

11 DO: If I may ask you just one or two questions.

12 Assuming that Daniel Pfankuch is an individual
13 in 2005 who went to the hospital for heat exhaustion and
14 (unintelligible), not heat stroke, but, you know,
15 that's -- that's what he was treated for, and assuming
16 that --

17 MOSLEY: Okay.

18 DO: -- as a medical examiner determining
19 Liz Neuman's cause of death in 2009, would something
20 that happened to a totally different individual in 2005,
21 some four years later, have anything to do with what
22 physically caused Ms. Neuman's demise?

[TIMESTAMP: 50:11]

23 MOSLEY: No.

24 DO: Okay. So that particular episode, if true,
25 would have nothing to do with your determination of

1 cause of death from Ms. Neuman; correct?

2 MOSLEY: Well, yeah. It could be dangerous to try
3 to extrapolate something like that into this case.

4 It's -- I mean, there's so many --

5 Is it at the same place with the same
6 materials? Is it --

7 I mean, I think it would be dangerous -- a
8 dangerous thing to do and I'd avoid it. I wouldn't do
9 it.

10 I mean, try to extrap- -- are you saying, would
11 I try to extrapolate data from something that happened
12 in 2005 to the current case in front of me?

13 Is that the question?

14 DO: Yes.

15 MOSLEY: No, I wouldn't.

16 DO: Okay. Thank you. I appreciate that.

17 Okay. So I also understand on April 15, 2011,
18 the State sent to you additional information. One was a
19 report by Richard Haddow, dated April 29, 2010, and a
20 criminalist from the Department of Public Services, I
21 think is the acronym, a report dated February 4, 2010.

22 Have you had a chance to review either one of
23 those?

24 MOSLEY: No.

25 And April 15th, that's last Friday?

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
)
vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

TRIAL DAY EIGHT

MARCH 2, 2011

Camp Verde, Arizona

(Partial transcript -- hearing on legal matters
and testimony of witness.)

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

1 noticed -- go ahead.

2 MS. POLK: Okay. Your Honor, what the
3 evidence in this case revealed, as the
4 investigators went out and interviewed participants
5 in the prior sweat lodge ceremonies, was that it
6 didn't matter what wood was used to burn. It
7 didn't matter what materials were on the sweat
8 lodge. It didn't matter what soil was underneath
9 the participants. What mattered was, was it
10 Mr. Ray who was conducting the ceremony and how
11 much heat was inside that sweat lodge.

12 The investigators discovered a pattern
13 that from 2003 to 2009, there were many, many, many
14 sweat lodge ceremonies conducted at Angel Valley.
15 The only time people got sick was when it was
16 Mr. Ray's sweat lodge ceremony.

17 So regardless of the fact that
18 from 2009 -- 2008 through 2009, the same structure
19 with the same tarps and the same sleeping bags that
20 was used from 2008 forward by Mr. Ray on two
21 occasions and by many, many other contractors --
22 and what that body of evidence showed is that when
23 that same sweat lodge structure was used in that
24 same place, over that same soil, with the same
25 tarps, and the same sleeping bags, with rocks from

1 the site, the people did not get sick when it was
2 someone other than Mr. Ray. When it was Mr. Ray
3 conducting his ceremony in 2008 and 2009, people
4 got sick.

5 And what the evidence showed and what the
6 investigators found also is that pattern when
7 Mr. Ray had a problem in 2005 because of the heat,
8 he actually ratcheted down the heat. And so we
9 know in 2006 there was not any problems.

10 He started ratcheting up the heat in
11 2007. There began to be some problems. 2008 he
12 made it even hotter. There were some serious
13 problems. And in 2009 three people finally died.

14 And what Mr. Li argued to the jury
15 yesterday was that what he was showing the jury in
16 terms of the various hearsay statements that were
17 put up about toxins and concerns, Mr. Li argued
18 that what he was showing the jury was relevant
19 because it went to the issue of why did the
20 detectives ignore other possible explanations for
21 cause of death.

22 The body of evidence is not that the
23 detectives ignored other possible explanations for
24 the cause of death. They were looking for causes.
25 But this big body of evidence that goes back to

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. V1300CR201080049
)	
JAMES ARTHUR RAY,)	
)	
Defendant.)	
<hr/>		

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY TWENTY-SIX
APRIL 1, 2011
Camp Verde, Arizona

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

11:37:35AM 1 people to be ill in his ceremony in October
11:37:38AM 2 of 2009.

11:37:39AM 3 The fact that this witness was personally
11:37:41AM 4 in that same structure a little bit earlier in the
11:37:46AM 5 year and did not get sick is very relevant to the
11:37:49AM 6 issue of causation. And then her experience in
11:37:55AM 7 that ceremony in 2009 in that same structure, how
11:37:59AM 8 long it was, how many rocks, how hot, is all
11:38:03AM 9 relevant.

11:38:06AM 10 MR. KELLY: Judge, I would remind the Court
11:38:08AM 11 that this witness's testimony on direct examination
11:38:11AM 12 was that she was not present during the
11:38:13AM 13 construction of the 2009 sweat lodge. She has no
11:38:17AM 14 basis to provide an opinion that identical
11:38:21AM 15 materials were used between the Mr. Singing Bear
11:38:24AM 16 sweat lodge and the James Ray International sweat
11:38:28AM 17 lodge in 2009. We have no foundation for anything
11:38:31AM 18 that happened in 2008.

11:38:32AM 19 I did file a specific motion requesting
11:38:35AM 20 the Court prohibiting lay witnesses providing
11:38:39AM 21 opinion testimony. And that motion was granted,
11:38:43AM 22 Judge.

11:38:44AM 23 Now, there is obviously, finally, Judge,
11:38:48AM 24 a significant 403 aspect to this particular line of
11:38:53AM 25 questioning since what the State of Arizona is

11:44:41AM 1 concern. I don't understand the causation
11:44:44AM 2 argument. What does this have to do with causation
11:44:47AM 3 when she was in a different sweat lodge on a
11:44:50AM 4 different day conducted by different people in a
11:44:52AM 5 different manner.

11:44:54AM 6 MS. POLK: Same sweat lodge.

11:44:55AM 7 THE COURT: Why would that necessarily show
11:44:58AM 8 any kind of fault on Mr. Ray either? There is
11:45:01AM 9 different sweat lodges. People conduct them
11:45:04AM 10 differently.

11:45:04AM 11 MR. KELLY: That's my 403 concern. I agree.
11:45:07AM 12 Why would that show anything to Mr. Ray?

11:45:09AM 13 THE COURT: As to causation, I thought I've
11:45:11AM 14 heard some suggestion there could be a problem with
11:45:14AM 15 tarps and materials that what might be on the
11:45:15AM 16 ground. There can be changes in all that. That's
11:45:19AM 17 a whole different kind of issue.

11:45:21AM 18 MR. KELLY: Then wouldn't it be necessary for
11:45:23AM 19 this witness to be able to testify that it was the
11:45:25AM 20 same tarp?

11:45:27AM 21 THE COURT: Well, it could not -- could only
11:45:30AM 22 be conditional relevance. If there is going to be
11:45:33AM 23 an issue, I would not want it to come in. Ms. Polk
11:45:35AM 24 is making the avowal that there will be somebody
11:45:39AM 25 saying they're the identical materials. The rules

11:51:09AM 1 remain. But the witness and the jury is excused at
11:51:12AM 2 this time.

11:51:12AM 3 Thank you.

11:51:12AM 4 (Proceedings continued outside presence
11:51:56AM 5 of jury.)

11:51:56AM 6 THE COURT: Ms. Polk, we had the rather
11:51:59AM 7 lengthy sidebar.

11:52:00AM 8 And I'll let the record show that the
11:52:02AM 9 jury has left. And Mr. Ray and the attorneys are
11:52:05AM 10 present.

11:52:08AM 11 After the lengthy sidebar I had that
11:52:13AM 12 concern with talking about being involved in other
11:52:17AM 13 sweat lodges. But what I had said is that if, in
11:52:22AM 14 fact, this was the same sweat lodge structure that
11:52:27AM 15 was used in October and completely the same, then
11:52:30AM 16 there would be relevance to this person being in
11:52:34AM 17 that sweat lodge.

11:52:36AM 18 I'm concerned about whether she really
11:52:39AM 19 knows that and concerned about is there really
11:52:42AM 20 another witness who would be saying that the
11:52:45AM 21 materials are just absolutely identical, that there
11:52:48AM 22 hadn't been any changing in the covering or
11:52:50AM 23 anything like that? And I didn't want to go any
11:52:52AM 24 further without addressing that.

11:52:54AM 25 MS. POLK: Your Honor, it's the state's belief

11:52:57AM 1 that there will be two more witnesses that -- or
11:52:59AM 2 perhaps three. The Hamiltons will testify that it
11:53:02AM 3 is the same skeleton and the same materials. And
11:53:07AM 4 then I believe Mr. Mercer will as well.

11:53:10AM 5 THE COURT: For the testimony to be admissible
11:53:15AM 6 on the basis I've indicated at sidebar, that's
11:53:20AM 7 critical. That's the case. So I wanted to stop
11:53:24AM 8 and make sure that that is the case before you got
11:53:26AM 9 into those questions about her experience in May or
11:53:34AM 10 whenever it was. I wanted to address that.

11:53:37AM 11 MS. POLK: And, Your Honor, I do believe that
11:53:39AM 12 it is the same. We are taking a lunch break -- and
11:53:42AM 13 I can see my detective nodding his head in
11:53:44AM 14 agreement with me. But I'll take the time at the
11:53:46AM 15 lunch hour to verify. But I believe that the
11:53:49AM 16 testimony will be that it's the same.

11:53:50AM 17 THE COURT: Thank you.

11:53:53AM 18 And, Mr. Kelly, you indicated you believe
11:53:56AM 19 there is a disclosure issue?

11:53:57AM 20 MR. KELLY: I do, Judge. But if I could
11:53:59AM 21 respond briefly to that. I'm concerned about the
11:54:02AM 22 state's response. I believe it's the same -- I
11:54:09AM 23 submit, Judge, that if there is any relevance --
11:54:12AM 24 and, again, I'd renew all my arguments at
11:54:14AM 25 sidebar -- in that somehow that relevance overcomes

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
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vs.) Case No. V1300CR201080049
)
JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY TWENTY-EIGHT
APRIL 6, 2011
Camp Verde, Arizona

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

08:57:33AM 1 tarps themselves. So the defendant is charging
08:57:36AM 2 causation.

08:57:37AM 3 Relevant to causation, then, is this
08:57:40AM 4 information that relates to sweat lodges run at
08:57:43AM 5 Angel Valley in the preceding years. And there's
08:57:46AM 6 actually three patterns that are relevant. The
08:57:50AM 7 first is that if it's the defendant running the
08:57:53AM 8 sweat lodge, then people get sick. It doesn't
08:57:57AM 9 matter what the kiva is made of. It doesn't matter
08:58:00AM 10 what the coverings were made of. What matters --
08:58:04AM 11 the common denominator is if it's the defendant
08:58:04AM 12 running the sweat lodge, then people get sick.

08:58:07AM 13 During that time frame from 2005
08:58:11AM 14 through 2009, there are many other sweat lodges
08:58:13AM 15 that are conducted on the property of Angel Valley.
08:58:16AM 16 And testimony will be that people don't get sick.

08:58:18AM 17 So the first pattern is regardless of the
08:58:21AM 18 kiva, regardless of the tops and the coverings and
08:58:24AM 19 the wood and the water and the rocks, if the
08:58:28AM 20 defendant runs it, then people get sick. That's
08:58:32AM 21 what's identical.

08:58:33AM 22 The second pattern is that from May
08:58:36AM 23 of 2008 forward -- actually, I think it's August
08:58:40AM 24 of 2008 forward, when the kiva was built that was
08:58:47AM 25 used in 2008, the latter part of 2008 and 2009,

11:22:53AM 1 recognize; correct?

11:22:54AM 2 A. That -- that could be true. Yes.

11:22:55AM 3 Q. A moving blanket, a big blue moving
11:22:59AM 4 blanket, looks like every other big blue moving
11:23:02AM 5 blanket; correct?

11:23:03AM 6 A. That's right.

11:23:03AM 7 Q. And with respect to the tarps -- you
11:23:05AM 8 know -- these blue tarps from Home Depot -- you
11:23:08AM 9 have no idea how to distinguish one tarp from
11:23:11AM 10 another?

11:23:11AM 11 A. No. They're all blue.

11:23:12AM 12 Q. They're all blue; right?

11:23:13AM 13 A. Blue, blue and gray or blue and brown.

11:23:16AM 14 Q. So other than those few tarps and
11:23:19AM 15 blankets that you -- strike that.

11:23:22AM 16 Other than the big brown rubber thing and
11:23:25AM 17 the few blankets that you do recognize, you can't
11:23:27AM 18 say -- you have no personal knowledge as to whether
11:23:32AM 19 the coverings are exactly the same for every sweat
11:23:36AM 20 lodge ceremony; correct?

11:23:37AM 21 A. I have no personal knowledge. But I
11:23:39AM 22 think they are.

11:23:40AM 23 MR. LI: Move to strike.

11:23:41AM 24 Q. You have no personal knowledge?

11:23:42AM 25 A. No personal knowledge.

11:23:43AM 1 THE COURT: The motion to strike is granted as
11:23:45AM 2 to what the witness thought.

11:23:51AM 3 Q. BY MR. LI: In fact, when you assembled
11:23:52AM 4 the sweat lodge in 2009, you noticed that there
11:23:55AM 5 were some new tarps that had been purchased?

11:23:58AM 6 A. Yes. That's correct.

11:23:59AM 7 Q. And so, for instance, those tarps for
11:24:01AM 8 sure were not in any other sweat lodge ceremony;
11:24:04AM 9 correct?

11:24:04AM 10 A. You would think so. Yeah.

11:24:06AM 11 Q. And you also have testified and told this
11:24:09AM 12 jury that sometimes when you needed to go get
11:24:12AM 13 tarps, you would go to other places other than the
11:24:16AM 14 pump house; correct?

11:24:16AM 15 A. That's true.

11:24:17AM 16 Q. And that's because these tarps were used
11:24:18AM 17 all over the property; correct?

11:24:19AM 18 A. Yes.

11:24:20AM 19 Q. Sometimes they were used to cover wood;
11:24:20AM 20 correct?

11:24:21AM 21 A. Yes.

11:24:22AM 22 Q. Sometimes they were used for other
11:24:23AM 23 purposes; correct?

11:24:23AM 24 A. That's correct.

11:24:24AM 25 Q. And you have no idea, at least in 2009

11:24:26AM 1 when were you only working two days, what was being
11:24:29AM 2 done with these tarps; correct?

11:24:30AM 3 A. That is correct.

11:24:35AM 4 Q. Now, you have also told us -- or you told
11:24:37AM 5 me, actually, yesterday -- that some of the
11:24:39AM 6 blankets were used for other purposes; correct?

11:24:42AM 7 A. Yeah.

11:24:42AM 8 Q. Sometimes they were taken out of the pump
11:24:44AM 9 house and maybe laid down on the ground to sit on.

11:24:46AM 10 A. That's correct.

11:24:47AM 11 Q. And so in 2009 for the 270 days you were
11:24:51AM 12 not working for Angel Valley, you have no idea what
11:24:54AM 13 those blankets were being used for; correct?

11:24:57AM 14 A. I have no idea.

11:25:00AM 15 Q. You don't even know, for instance,
11:25:03AM 16 whether or not the tarps and blankets were in the
11:25:06AM 17 pump house in January of 2009; correct?

11:25:11AM 18 A. Personally, I didn't go in the pump
11:25:15AM 19 house.

11:25:15AM 20 Q. So you do not have personal knowledge
11:25:18AM 21 whether the tarps and blankets were in the pump
11:25:20AM 22 house in January 2009; correct?

11:25:21AM 23 A. Correct.

11:25:22AM 24 Q. You don't have personal knowledge whether
11:25:24AM 25 they were in there February of 2009; correct?

11:25:26AM 1 A. That's correct.

11:25:26AM 2 Q. You don't have personal knowledge

11:25:29AM 3 March 2009; correct?

11:25:29AM 4 A. Yeah.

11:25:30AM 5 Q. April 2009?

11:25:31AM 6 A. Yeah.

11:25:31AM 7 Q. And that's because you didn't go into the

11:25:34AM 8 pump house for the entire year other than those two

11:25:37AM 9 days in which you helped assemble the sweat lodges;

11:25:37AM 10 correct?

11:25:37AM 11 A. Uh-huh.

11:25:37AM 12 Q. Yes or no?

11:25:41AM 13 A. Yes.

11:25:43AM 14 Q. Thank you. And you have no idea how

11:25:45AM 15 those tarps and blankets were being stored in the

11:25:48AM 16 pump house; correct?

11:25:52AM 17 A. Yes and no.

11:25:53AM 18 Q. Okay. Well, let me rephrase the

11:25:55AM 19 question. In the 270 days that you were not

11:25:57AM 20 working in Angel Valley and not walking into the

11:26:00AM 21 pump house, you don't know what was going on in

11:26:03AM 22 that pump house, did you?

11:26:03AM 23 A. No, I don't.

11:26:04AM 24 Q. Okay. So you don't know, for instance,

11:26:06AM 25 if somebody walked into the pump house on January 2

11:26:10AM 1 and did something?

11:26:10AM 2 A. I don't have any idea.

11:26:12AM 3 Q. You would have no idea whatsoever?

11:26:14AM 4 A. No.

11:26:14AM 5 Q. Now, you have seen rat poison in the pump

11:26:17AM 6 house; correct?

11:26:18AM 7 A. Yes.

11:26:18AM 8 Q. So when you told this jury that they

11:26:21AM 9 don't use chemicals at Angel Valley --

11:26:25AM 10 MS. POLK: Your Honor, this goes beyond the

11:26:29AM 11 scope.

11:26:29AM 12 MR. LI: I'll move on from that.

11:26:30AM 13 Q. You don't know, for instance, whether rat

11:26:32AM 14 poison was used in the pump house?

11:26:34AM 15 MS. POLK: Goes beyond the scope.

11:26:36AM 16 THE COURT: Mr. Li.

11:26:37AM 17 Sustained.

11:26:38AM 18 MR. LI: Okay.

11:26:39AM 19 Q. You do not know whether or not any

11:26:42AM 20 additive was used to any of the coverings in the

11:26:45AM 21 270 days you were not in the pump house; correct?

11:26:49AM 22 A. Yeah. That's right.

11:26:51AM 23 Q. You have no idea for those 270 days you

11:26:54AM 24 were not in the pump house how these tarps and

11:26:57AM 25 blankets were being maintained; correct?

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,)
)
Plaintiff,)
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vs.) Case No. V1300CR201080049
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JAMES ARTHUR RAY,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
TRIAL DAY TWENTY-FIVE
MARCH 31, 2011
Camp Verde, Arizona

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

02:59:55PM

1

information that was provided by the sheriff's

02:59:57PM

2

department in an attempt to give the doctor a

03:00:00PM

3

thorough and comprehensive understanding of what

03:00:03PM

4

they knew.

03:00:04PM

5

Detective Diskin will be available for

03:00:07PM

6

cross-examination to the defense if they want to

03:00:10PM

7

ask him about why he chose to put particular things

03:00:13PM

8

in the PowerPoint. That's fair for them to go in

03:00:15PM

9

to that.

03:00:16PM

10

But the defense has created a situation

03:00:18PM

11

where they have asked this doctor about what he was

03:00:21PM

12

told, what he wasn't told, and left an impression

03:00:25PM

13

in the jurors' mind that he wasn't told quite a few

03:00:28PM

14

things about the incident.

03:00:30PM

15

And it's appropriate for the state at

03:00:32PM

16

this point to go into what precisely the doctor was

03:00:36PM

17

told and what was provided to him.

03:00:38PM

18

THE COURT: You talked about the incident, but

03:00:40PM

19

then you're talking about prior incidents,

03:00:43PM

20

Mr. Hughes. How would a prior incident from four

03:00:45PM

21

years ago -- how would it relate to what an opinion

03:00:50PM

22

would be as to what caused the situation here?

03:00:54PM

23

MR. HUGHES: Well, the defense has created a

03:00:56PM

24

special situation now where they've created an

03:00:58PM

25

issue and under their cross-examination of the

03:07:19PM 1 incident got sick, that Mr. P. suffered heat
03:07:22PM 2 stroke. The Court knows based upon the evidence
03:07:24PM 3 it's heard that that is just not true.

03:07:41PM 4 And just to be clear, my objection, Your
03:07:43PM 5 Honor, I don't have any issues with Mr. Hughes
03:07:45PM 6 asking questions regarding what information was
03:07:47PM 7 provided to him regarding the '09 incident in his
03:07:51PM 8 PowerPoint. But beyond that, I think that we're
03:07:55PM 9 treading on dangerous grounds.

03:07:57PM 10 THE COURT: We are. There is no doubt about
03:07:58PM 11 that. That could take us right into the 404(b)
03:08:06PM 12 area. And I'm looking at the nature of the
03:08:15PM 13 information provided here.

03:08:19PM 14 Was it with Mr. Pfankuch -- weren't some
03:08:20PM 15 of the descriptions -- I remember reading hundreds
03:08:23PM 16 of pages of interviews about various things,
03:08:26PM 17 something about walking on hands and superhuman
03:08:29PM 18 strength. Was that the person?

03:08:33PM 19 MS. DO: Yes. I think the witnesses' accounts
03:08:35PM 20 were that he had an out-of-body experience.

03:08:38PM 21 THE COURT: Actually, superhuman strength.
03:08:42PM 22 That's one of the things that's sticking in my mind
03:08:44PM 23 from looking at that. Was punching and that kind
03:08:48PM 24 of thing?

03:08:49PM 25 MS. DO: I recall descriptions of him being

<p>73</p> <p>1 it?</p> <p>2 A It turns to ash</p> <p>3 Q You can't use that /A log again?</p> <p>4 A Not that same log</p> <p>5 Q It's turned to ash?</p> <p>6 A Right</p> <p>7 Q Automatically no matter what you are not</p> <p>8 using the same wood correct?</p> <p>9 A Not using the same wood but it came from</p> <p>10 the same area</p> <p>11 Q Understand I'm going to go little by</p> <p>12 little here?</p> <p>13 A Okay</p> <p>14 Q You got a log here, /THERPB the same</p> <p>15 pieces of wood?</p> <p>16 A No, because they /PWURPBD burnt up.</p> <p>17 Q That's another not equals?</p> <p>18 A Okay</p> <p>19 Q Now, you say they're the same types of</p> <p>20 wood or some of it?</p> <p>21 A That's right</p> <p>22 Q That in 2009, when you said I think it</p> <p>23 was the wood?</p> <p>24 A Uh-huh</p> <p>25 Q The reason why you said that because you</p>	<p>75</p> <p>1 THE COURT Ms Polk</p> <p>2 MS POLK. Mr. Liz questions are assuming</p> <p>3 facts not in evidence. Rather than in the witness</p> <p>4 knows if the wood was treated he's assuming the</p> <p>5 wood was treated with his questions and that is not</p> <p>6 in evidence</p> <p>7 THE COURT Overruled Overruled.</p> <p>8 MR. LI</p> <p>9 Q. You don't know one way or another whether</p> <p>10 it was pressure treated do you?</p> <p>11 A I have no idea</p> <p>12 Q You don't know one which or another</p> <p>13 whether it was oil stained or anything like that?</p> <p>14 A No</p> <p>15 Q /TPHOUF idea one way or another whether</p> <p>16 any of the wood you burned for the 2009 James Ray</p> <p>17 International sweat lodge had been treated in any</p> <p>18 way at all?</p> <p>19 A No, I wouldn't know</p> <p>20 Q But you did say to the detectives on the</p> <p>21 night of the accident, I think it was the wood?</p> <p>22 A That is the only thing that was different</p> <p>23 and I was still kind of panic</p> <p>24 Q Now another component of the sweat lodge</p> <p>25 is the land that it sits on?</p>
<p>74</p> <p>1 used only construction wood?</p> <p>2 A That's correct</p> <p>3 Q To heat up the logs, the rocks correct?</p> <p>4 A Yes</p> <p>5 Q Earlier you had used some mixture?</p> <p>6 A That's correct</p> <p>7 Q. So even the types are not exactly the</p> <p>8 same are they?</p> <p>9 A No, they're not</p> <p>10 Q So the type was not equal, correct?</p> <p>11 A That's correct</p> <p>12 Q And in 2007 and 2008 and other years, you</p> <p>13 used mostly tree wood or all tree wood That's</p> <p>14 right?</p> <p>15 Q Now, do you have any idea how this wood</p> <p>16 was treated?</p> <p>17 A No</p> <p>18 Q You have no idea at all?</p> <p>19 A No idea</p> <p>20 Q So you don't know one way or another</p> <p>21 whether it was lack /KERD, correct?</p> <p>22 A That's right</p> <p>23 Q You have no way of knowing pressure</p> <p>24 treated?</p> <p>25 MS POLK Objection</p>	<p>76</p> <p>1 A. Right</p> <p>2 Q And the land is that cleared space that</p> <p>3 we looked at right?</p> <p>4 A Uh-huh</p> <p>5 Q And you have no idea how that land is</p> <p>6 maintained during 2007 or 2009, correct?</p> <p>7 A Not during 2009</p> <p>8 Q So in 2009, you don't know what the</p> <p>9 landscapers did on that land, do you?</p> <p>10 A. No</p> <p>11 Q And you don't know what the Hamiltons did</p> <p>12 on that land do you?</p> <p>13 A No</p> <p>14 Q And you don't know what /RO /TEU /HRO</p> <p>15 /SRE /HRAS questions?</p> <p>16 A I don't remember his last name /RO /TEU</p> <p>17 /HRO</p> <p>18 Q What /RO /TEU /HRO did on the land?</p> <p>19 A No</p> <p>20 Q You have no idea what any of the</p> <p>21 volunteers did on the land?</p> <p>22 A No I would see them doing things around</p> <p>23 while I was walking around the property once in a</p> <p>24 while No I don't know exactly what they were</p> <p>25 doing</p>

Kathy Durrer

From: Kathy Durrer
Sent: Thursday, April 29, 2010 8:08 AM
To: Ross Diskin; Sheila Polk; Bill Hughes; Penny Cramer; Mike Poling
Subject: RE: Summary of Environmental conditions experienced by Liz Neuman at the Angel Valley Retreat sweat lodge

Is Rick going to prepare a formal report for disclosure? K.

From: Ross Diskin
Sent: Thursday, April 29, 2010 7:41 AM
To: Sheila Polk; Bill Hughes; Kathy Durrer; Penny Cramer; Mike Poling
Subject: FW: Summary of Environmental conditions experienced by Liz Neuman at the Angel Valley Retreat sweat lodge

Here are the results of the air quality expert's examination. He wanted me to tell the prosecutors that he is available to answer questions and/or testify if needed.

Thanks,

Ross

From: Rick Haddow [mailto:rhaddowpi@earthlink.net]
Sent: Thursday, April 29, 2010 6:49 AM
To: Ross Diskin
Subject: Summary of Environmental conditions experienced by Liz Neuman at the Angel Valley Retreat sweat lodge

Ross,

For your review, I have outlined my preliminary environmental investigation and analysis of the sweat lodge indoor air quality and environmental conditions as experienced by Liz Neuman. My determination of the environmental factors which contributed to her death is based on the following findings:

- The lodge maintained hazardous levels of indoor air temperature worsened by saturated air from the application of water onto the heated rock pit. The high relative humidity allowed the stored energy from the rock pit to enter Liz's lungs heating her core. This high relative humidity and temperature created an environmental condition that would not allow Liz's body the ability to self regulate her internal temperature. The environmental condition existed for Liz to cause a hazardous internal temperature leading to hyperthermia and organ failure.
- A contributing cause of Liz's hyperthermia is based on the rock pit's offset of center, closer to the North West section of the lodge where Liz was positioned in the lodge. The radiant heat energy from the rock pit would make this NW section the hottest in the lodge. The participant's space between the rock pit and the exterior wall would be the smallest inside the lodge.

- The NW section in which Liz was positioned experienced hazardous concentrations of carbon dioxide (a condition known as hypercapnia). The NW section of the lodge experienced a radiant heat barrier that would greatly contribute to the section's air stagnation and build up of carbon dioxide. This heat barrier would severely limit Liz's space from being ventilated or affording an air exchange when the door was opened between rounds.
 - Liz's health condition was worsened by the length and exposure to both heat and carbon dioxide. Liz never left the lodge or changed her position inside. Participants James Shore and Kirby Brown experienced these same environmental conditions and died. Those other participants who experienced severe illness and hospitalization were also in the same general area as Liz.
 - Both hyperthermia and hypercapnia will cause and multiply the adverse effects to the body's ability to self regulate the gaseous components of the blood chemistry, leading to a chemical blood imbalance causing internal organ failure.
 - The lodge construction created a nearly air tight structure. The rock pit radiant heat would create positive pressure inside the lodge. This positive pressure would lessen the lodge's ability to exchange inside air to outside ambient air. The lodge door opening would have a small air exchange and heat loss in the area of the door. This heat loss would lessen the participant's exposure to the environmental conditions. Thus, for those participants located between the rock pit and the door, environmental conditions would have differed greatly from those experienced by Liz located between the rock pit and the exterior wall.
 - Environmental health effects are based on pollutant concentration, temperature and exposure. For those participants moving from one section of the lodge to another or leaving the lodge all together between rounds, the accumulated effect to their blood chemistry would again, greatly differ from that of Liz and those participants located in her section of the sweat lodge.
 - The environmental conditions and exposure length would most certainly impair cognitive function, thereby rendering Liz incapable of reasoning or making sound judgments that would have enabled her to make the decision to remove herself from the lodge for self preservation.
- If you or others require additional information please do not hesitate to contact me.

Respectfully,

Rick Haddow
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SUPERIOR COURT OF STATE OF ARIZONA
COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

JAMES ARTHUR RAY,

Defendant.

CASE NO. V1300CR201080049

TRANSCRIPT OF INTERVIEW

Witness: Richard Haddow

By: Truc Do

Date: April 15, 2011

Length: 29:57

Start Time: 1:45 p.m.

1 HADDOW: Yes.

2 DO: And it was in your opinion, that in addition to, you know, the human
3 agents, the human factors like how many rocks are being called in, how
4 many people are coming in and out. Things that are in the control of
5 people and their will, right so to speak?

6 [TIME STAMP: 25:11]

7 HADDOW: Yes.

8 DO: You felt that another, you know, let's put the weight aside—another factor
9 that lead to this tragedy was the construction of the sweat lodge, correct?

10 HADDOW: Yes.

11 DO: And you made that known, not only in your April 29 email to Det. Diskin
12 that was then forwarded to the prosecution but you also made that known
13 to the prosecution when you were explaining all these various factors of
14 heat barrier, airtight structure, things like that, correct?

15 HADDOW: Yes.

16 DO: Okay, give me one second. I'm going to review something real quick.

17 [TIME STAMP: 25:39 no dialogue until 26:01]

18 DO: Oh, by the way what's formaldehyde out-gassing?

19 HADDOW: If a material has—depending on what the material is, it could—a
20 constituent of it is heated. It could maybe produce a gaseous release.

21 DO: Mm hmm.

22 HADDOW: It's sort of like when you go down to a car—a new car smell.

23 DO: Yeah.

24 HADDOW: That new car is the off-gassing of plastics, and that's sort of where....

25 DO: Okay, how do you test for that, do you know? Is there a way?

26 HADDOW: If you were—there's a couple of different ways. If you wanted to do—
27 expose it to heat and do an air analysis with a gas chromatograph or some
28 spectrum analyzer you can probably determine it.

Preliminary modeling + research findings based on known observations

DESCRIBE EACH:

CO₂ conc ^{1.53 spec gravity} SYMPTOMS (CO₂ enrichment)
3% Double breathing rate
5% ↑ breathing force

O₂ Depletion 5,000 elev. 34% Respiration based on Henry law 17.688
Water can absorb O₂
• Can calculate O₂ depletion calculation

HUMIDEX - Multipher

Modeling

Variables ^{per session} # of people, amount of water used in rocks, heat from rocks, material/construction of lodge, time in lodge per session + continuous vs RESTING outside period, session length, break length, other pollutants: sage/oil essences; offgassing of formaldehyde, pooling height of CO₂, position of people, lying/sitting formaldehyde
Human breath CO₂ exhale 35,000 - 50,000 (100 times atmosphere)
Air exchange rate/potential, temperature, Rel Humidity, CO, O₂
Bar pressure, Ambient temp, WSTD, location of
Rock heating fire; smoke - CO, formaldehyde
into lodge, heat
interference

Breathing rate increases; more CO₂ produced/O₂ taken

Structure



35.4 m³ = Air Volume = 1250 ft³

3.4 m³ displaced by people = 120 ft³

Formaldehyde outgassing

Was the sweat lodge layered differently this year compared to other years?

Note: Vendor Michael Barber said last year you could stand up.

- Determine each round
 - Length
 - # of participants
 - # of rocks

~~First review of~~

preliminary review of VCSO interviews
has provided enough information to ~~offer~~ ^{offer}

these preliminary findings: ^{had experienced high}
^(time + conc.)

- Liz Numan's exposure to extremely high
ambient air temperature, relative humidity and Carbon Dioxide.

~~The~~ The sweat lodge had no ventilation system.

- The sweat lodge door/access opening did
not provide adequate air exchange to the
majority of the interior space.

- 56 glowing ~~red~~ hot rocks added to the
fire pit ~~caused~~ ^{caused} ~~unreasonably~~ excessive
during the ceremony

accounted for the extremely high ambient
temperatures.

- The sweat lodge construction

- Was sealed by excess material on
the ground held in place by rocks.

this construction design ^{greatly contributed to} ~~caused~~ the

about environmental conditions, ^{that} to ~~become~~

hazardous and ~~unable to support~~